

### REMARKS

Reference is made to the Office Action mailed on June 18, 2002 in connection with the subject patent application.

Claims 51-85 are obtained by amending the claims as originally filed and do not involve addition of subject matter which was not disclosed in the patent application as filed. For the reasons that will be explained below, it is believed that the new claims overcome the reasons for rejection raised by the Examiner in the pending Office Action.

### CLAIMS 51 AND 72

Claim 51 discloses a room-temperature pasty compound for food use, comprising: water, a sugar, a stabilising and thickening agent, and at least one of the following agents: antioxidant agent; preservative agent; acidifying agent, wherein said compound is free of fruit products and is intended to be directly mixed with a type of fruit product selected from a desired group of fruit products.

Claim 72 discloses a process for preparing a food product in which the compound of claim 51 is used. The process comprises the following steps: providing a room-temperature ready-to-use pasty compound containing a sugar, water, a stabilising and thickening agent, and at least one of the following agents: antioxidant agent, preservative agent, acidifying agent; said compound being free of fruit products; selecting a type of fruit product from a desired group of fruit products; and directly mixing said type of fruit product with said compound.

Claim 51 and 72 have been limited to a pasty compound, such as the one disclosed in example 5 of the patent application as originally filed, and in page 3, lines 14-15 of the international patent application as filed.

The compound disclosed in example 5 comprises water, a sugar, and variable proportions of antioxidant agent, preservative agent, acidifying agent, stabilising and thickening agent. These proportions can vary from 0 to a respective upper limit shown

in example 5. Since the quantity of each agent may be 0, the agent may be present or not in the compound. In the case of claims 51 and 72, the stabilising and thickening agent has been included in the compound since it helps in giving the compound a pasty consistency. At least one agent selected from the group comprising an antioxidant agent, a preservative agent and an acidifying agent is also included in the compound of claim 51, depending on the user's needs.

A further basis for the composition of claims 51 and 72 may be found in page 2, lines 4-7 of the international application as originally filed, which read as follows: "All the agents mentioned above may be contained in the compound according to the invention, but the compound may contain just some of said agents, depending on the desired features of the compound".

None of examples 1-5 of compounds disclosed in the subject patent application relates to a compound containing fruit products, since fruit is to be added to the compound when it is desired to prepare a final product. Therefore, the feature of compound "free of fruit products" disclosed in claims 51 and 72 is supported by the description as originally filed.

Finally, the compound of claim 51 is intended to be directly mixed with a type of fruit product selected from a desired group of fruit products. This feature can be inferred from page 11, lines 24-27 of the international application as filed, which state: "The invention provides a practical and versatile compound which allows the user to freely choose the type of sauce to be prepared depending on the particular tastes of his customers, or on the range of fresh fruit available on the market". For the reasons explained above, it is believed that claims 51 and 72 only contain subject matter which was disclosed in the subject patent application as originally filed.

#### CLAIM 57

Claim 57 discloses a room-temperature compound for food use, consisting of: a sugar, water, a stabilising and thickening agent, and at least one of the following agents: antioxidant agent; preservative agent; acidifying agent, wherein the quantities

of said water and said stabilising and thickening agent are so chosen as to give said compound a pasty consistency, and said compound is intended to be directly mixed with a type of fruit product selected from a desired group of fruit products.

Claim 57 relates to the same subject matter disclosed in claim 51, but is in a more limiting form, since it discloses a compound "consisting of" a number of ingredients. The basis for claim 57 is again example 5, which discloses all the ingredients contained in the compound of claim 57, and nothing more than those ingredients. Therefore, claim 57 is supported by the description of the original patent application.

#### CLAIMS 63 AND 78

Claim 63 discloses a room-temperature compound for food use, comprising: a sugar, a stabilising and thickening agent, an antioxidant agent, a preservative agent, an acidifying agent, wherein said compound is free of fruit products and is intended to be directly mixed with a type of fruit product selected from a desired group of fruit products.

Claim 78 discloses a process for preparing a food product, in which the compound according to claim 63 is used. The process comprises the following steps: providing a room-temperature ready-to-use compound containing a sugar, a stabilising and thickening agent, an antioxidant agent, a preservative agent, an acidifying agent, said compound being free of fruit products; selecting a type of fruit product from a desired group of fruit products; directly mixing said type of fruit product with said compound.

Claims 63 and 78 relate to a compound containing sugar, and all the four agents disclosed in examples 1-5 of the application as originally filed. As can be inferred from these examples, the compound is free of fruit products. The compound is furthermore intended to be directly mixed with a type of fruit product selected from a desired group of fruit products, which feature was originally disclosed in page 11, lines 24-27 of the international application as filed. Thus, claims 63 and 78 do not

contain new subject matter with respect to the subject matter disclosed in the patent application as originally filed.

#### CLAIM 85

Claim 85 discloses a process for preparing a fruit salad, comprising the following steps: mixing uncooked particles of fruit with a compound containing sugar, a preservative agent and at least one of the following agents: antioxidant agent; stabilizing and thickening agent; acidifying agent, and serving said uncooked particles of fruit and said compound to a potential consumer.

Examples of fruit salads prepared by means of the process of claim 85 are given in page 9, lines 28-36, and in page 10, lines 1-17 of the international patent application as filed.

#### PATENTABILITY OF NEW CLAIMS 51-85

The Examiner has rejected claims 20-50 as being non patentable in view of US 4,387,109, in the name of Kahn et al. It is believed that new claims 51-85 presently on file overcome the Examiner's rejections.

Kahn et al. discloses microbiologically stable intermediate-moisture food products which are normally maintained at freezer temperatures. The provision of certain ingredients, and the quantities thereof in the food product, allow the food products according to Kahn et al. to be held out of the freezer at room temperature or at refrigerator temperature for a considerable period of time without spoilage. Furthermore, many of the food products according to Kahn et al. are adapted to remain spoonable or pourable at freezer temperatures. While disclosing the preferred embodiments of the invention, Kahn et al. shows a number of recipes through which food products having the features mentioned above may be obtained. Some of these food products may contain fruit, and may further contain additives such as the agents disclosed in the subject patent application. For instance, example 3 of Kahn et al. teaches how to prepare an apple donut filling in which dehydrated apple pieces are mixed with water, dextrose-fructose syrup (sugar), starch (stabilising and thickening

agent), potassium sorbate (preservative agent), ascorbic acid (antioxidant agent) and citric acid solution (acidifying agent).

However, Kahn et al. simply teaches to prepare a food product containing a pre-established type of fruit, namely apples, and to add to this food product preset additives having a certain function. Kahn et al. does not disclose the idea of providing a compound which contains certain additives, but does not comprise fruit products, and which is intended to be directly mixed with a fruit product selected from a desired group of food products.

On the other hand, the subject patent application provides a compound which is free of fruit particles, and which is intended to be mixed to a desired type of fruit selected, for example, in the group of fruit types available on the market in a certain period of the year, or on the basis of customers' preferences. The compound claimed in the subject patent application can be used potentially with any type of fruit, since it does not contain fruit products which could be incompatible with certain types of fruit. It is a room-temperature compound that does not require particular precautions in storage, and it is particularly easy to handle when in a pasty form.

According to the invention claimed in the subject patent application, the same compound can be used with a variety of types of fruit, in a variety of different forms (for instance fresh fruit, fruit juice, fruit puree), to obtain a variety of food products (for instance fruit sauces, stuffing sauces, fruit salads, topping sauces, garnishing sauces, etc.). The claimed compound is not intended to be used in a particular recipe, with a particular kind of fruit and a particular formulation of ingredients.

Owing to the claimed compound, the user, in particular the professional user, has simply to decide which kind of product he wishes to prepare, which type of fruit he intends to use, and then merely add the claimed compound, whatever the chosen type of fruit may be. This allows the user to quickly prepare whichever fruit-based product he desires, just in the quantity he needs. Thus, the user can prepare for instance a strawberry sauce if his customers ask him to do so, or a pear sauce if in that moment he has plenty of pears to use. It is no longer necessary for the user to buy a large number of different sauces, in order to always be ready to meet his customers'

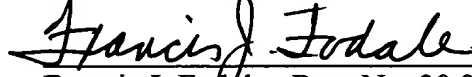
requests. This allows money and space to be saved and ensures that no sauce is wasted, as often happens when a big sauce jar is opened and left unsealed for a long period of time before being re-used. Kahn et al. does not contain any teaching on this matter. Kahn et al. does not suggest the idea of using a single compound with a type of fruit selected from a plurality of types of fruit, so as to accomplish a plurality of recipes.

In the outstanding Office Action, the Examiner states also that Kahn et al. teaches a pre-mix of ingredients to be used for preparing a food product. For instance, example 5 of Kahn et al. discloses a dry pre-mix comprising sucrose (sugar), sodium alginate, guar gum and starch (thickening and stabilizing agents) and sodium benzoate (preserving agent). However, the pre-mix disclosed in Kahn et al. is intended to be used to prepare a donut filling having the taste of black raspberry, as disclosed in the recipe of example 5. There is no suggestion in example 5 of Kahn et al., nor in any other example of that patent, that would lead the skilled person to provide a compound containing the claimed additives and free of fruit products, which compound is specifically intended to be used with a type of fruit selected by the user among a virtually unlimited number of types of fruit. According to Kahn et al., the user cannot select a type of fruit with which the pre-mix of additives may be used, since the type of fruit is already fixed by the particular recipe followed by the user. For example, if the recipe relates to an apple donut filling as in example 3 of Kahn et al., nothing but apples may be used to carry out the recipe.

For the reasons mentioned above, it is believed that new claims 51-85 meet the requirements of 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) cited by the Examiner in his Office Action and the grant of a patent on the basis of such claims is respectfully requested.

If it is determined that any fees are due, the Commissioner is hereby authorized and respectfully requested to charge such fees to Deposit Account No. 50-0852.

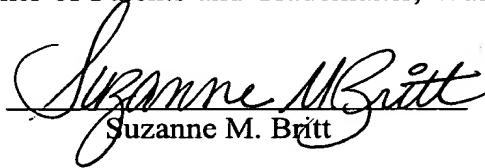
Respectfully submitted,



Francis J. Fodale Reg. No. 20,824  
Reising, Ethington, Barnes, Kisselle,  
Learman & McCulloch, P.C.  
P.O. Box 4390  
Troy, Michigan 48099  
(248) 689-3500

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on: **December 17, 2002.**

  
Suzanne M. Britt